UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte PATRICK W. DOWD
AND JOHN T. McHENRY

Appeal No. 2005-2713
Application No. 09/287,654

HEARD: December 13, 2005

Before GROSS, BARRY and SAADAT, Administrative Patent Judges.
SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S. C. § 134 from the Examiner's final rejection of claims 1, 4-8, 14 and 17-21. Claim 27 has been canceled while claims 2, 3, 9-13, 15, 16 and 22-26 have been objected to but indicated allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

We reverse.

BACKGROUND

Appellants' invention is directed to controlling the processing flow of data packets and allowing a connectionless network packet access to an information processing network. In order to minimize the amount of processing time, the connectionless network packet is compared only once to a database containing files for allowing access.

Representative independent claim 1 is reproduced below:

1. A method of accessing an information processing network, comprising the steps of:

a) initializing a database, an approved list, and a disapproved list, where the database contains rules for allowing and denying access to the information processing network, where the approved list includes approvals of connectionless network packets, and where the disapproved list includes disapprovals of connectionless network packets;

b) receiving a connectionless network packet;

c) computing a flow tag based on the connectionless network packet;

d) discarding the connectionless network packet and returning to step (b) if the flow tag is on the disapproved list;

e) allowing the connectionless network packet access to the information processing network and returning to step (b) if the flow tag is on the approved list;

f) comparing the flow tag to the database if the flow tag is not on the approved list and is not on the disapproved list;

g) discarding the connectionless network packet, adding the flow tag to the disapproved list, and returning to step (b) if the database rejects the flow tag; and

h) allowing the connectionless network packet access to the information processing network, adding the flow tag to the approved list, and returning to step (b) if the database accepts the flow tag.

The Examiner relies on the following references:

Coley et al. (Coley) 5,826,014 Oct. 20, 1998

Dan Decasper et al. (Decasper), "Crossbow: A Toolkit for Integrated Services over Cell switched IPv6," 1997, pp. 1-10.

Claims 1, 4-8, 14 and 17-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Decasper and Coley.

We make reference to the final rejection (final, mailed June 25, 2003) and the Examiner's Answer (mailed September 22, 2003) for the Examiner's reasoning and to the appeal brief (filed July 1, 2003) for Appellants' arguments thereagainst.

OPINION

The focus of Appellants' arguments is that the Association Identification Unit (AIU) disclosed in Decasper stores filters which do not contain rules and may not be equated with rules (brief, page 6). Appellants point out that Decasper accepts every packet without making any judgment and mainly is concerned with directing flows to appropriate modules (id.). Emphasizing

the distinction between the claimed approved list of the flow tags and the flow identifier of Decasper, Appellants argue that Decasper merely discloses a router which does not disallow any packets and, instead, matches packets to filters based on tags identifying the packets (brief, page 7, oral hearing). Additionally, Appellants argue that since Coley requires a series of tests for each packet for determining accessibility and fails to teach or suggest computing a flow tag only for those flows that are not pre-approved or pre-disapproved, there is no reason for the skilled artisan to consider using a disapproved list or the benefit of being more efficient (brief, page 9; oral hearing).

In response to Appellants' arguments, the Examiner asserts that since the dictionary definition of the terms "rules" and "filter" are the same, the filtering of the combination of Decasper and Coley is a specific form of rules (answer, page 5). Furthermore, to support the modification, the Examiner argues that the benefits of protecting a network suggest accepting the desired packets while the unacceptable packets are rejected (answer, page 8). The Examiner further argues that Decasper does disclose associating a flow tag with a flow even if the packet belongs to an unknown flow, which is taught by Coley to be accepted or rejected based on their flow tag (answer, page 10).

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). The Examiner must not only identify the elements in the prior art, but also show "some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead the individual to combine the relevant teachings of the references." In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Such evidence is required in order to establish a prima facie case. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984).

Upon a review of the applied prior art, we disagree with the Examiner that the tags used to match packets to filters in Decasper are disclosed or suggested to be related to controlling the access by approving or disapproving the tags. What a reference teaches is a question of fact. In re Baird, 16 F.3d 380, 382, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994) (citing In re Beattie, 974 F.2d 1309, 1311, 24 USPQ2d 1040, 1041 (Fed. Cir. 1992)). Decasper matches all the packets to the available filters by tagging them with flow identifiers and by even creating a new flow entry for the packets without a known flow

(page 5, lines 1-6). Therefore, as argued by Appellants (brief, pages 6-7), all the packets are matched with the available filters to be processed without any determination as to whether access should be granted or disallowed. Therefore, filters of Decasper cannot be equated with the claimed rules contained in a database since there are no disallowed packets to be considered by the rules database.

Coley, on the other hand provides a firewall operation in which access by users is denied if the user is not authorized based on set criteria (col. 10, lines 56-62). In particular, a proxy agent in Coley completes a set of tests for determining authorization which, if failed at any step, causes the access to be denied (Figures 4A and 4B). As pointed out by Appellants (brief, page 9), the closest Coley comes to suggesting the claimed subject matter is merely disallowing unauthorized access. However, this way of blocking access by executing a series of tests for each packet contains no suggestion that only the packets with a computed flow tag which is on neither of disapproved and approved lists should be compared to the rules database, as provided for in Appellants' claim 1.

Therefore, we remain unconvinced by the Examiner that testing for identifying authorized users of Coley sufficiently

suggests the claimed use of approved/disapproved lists or the rules database. Accordingly, based on the Examiner's failure to establish a prima facie case of obviousness, the 35 U.S.C. § 103 rejection of independent claims 1 and 14, as well as claims 2-13 and 15-26 dependent thereon, over Decasper and Coley cannot be sustained.

CONCLUSION

In view of the foregoing, the decision of the Examiner rejecting claims 1, 4-8, 14 and 17-21 under 35 U.S.C. § 103 is reversed.

REVERSED

ANITA PELLMAN GROSS)
Administrative Patent Judge)
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